

Nos. 16-56057 & 16-56287

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

MICHAEL SKIDMORE,
AS TRUSTEE FOR THE RANDY CRAIG WOLFE TRUST
PLAINTIFF, APPELLANT AND APPELLEE

vs.

LED ZEPPELIN, *ET AL.*
DEFENDANTS AND APPELLEES
AND
WARNER/CHAPPELL MUSIC, INC.,
DEFENDANT, APPELLEE AND APPELLANT

APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
HON. R. GARY KLAUSNER, DISTRICT JUDGE, CASE NO.15-cv-03462 RGK (AGR_x)

**DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION FOR
LEAVE TO RESPOND TO AMICI CURIAE BRIEFS OF THE
UNITED STATES, 123 SONGWRITERS & RIAA & NMPA**

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In moving for leave to file by August 30, 2019, briefs in response to the amici briefs of the United States, 123 Songwriters and the Recording Industry Association of America (RIAA) and National Music Publishers Association (NMPA), plaintiff, appellant and appellee Michael Skidmore (1) misstates defendants' position on plaintiff's motion and (2) demonstrates that at most he should be allowed one more responsive brief because the two he now seeks to file would be duplicative of each other and the brief he just filed in response to the amicus briefs of the IP Law Professors and the Musicologists.

First, plaintiff represents to the Court that defendants "have stated that they do not oppose this motion, but believe that [he] should only be allowed to file a single combined brief in response to all three briefs." Plaintiff's Motion (Dkt. Entry 134) at 2-3. Actually, defendants consented to plaintiff's filing of a single responsive brief by August 29, 2019 – leaving a full business day before the Labor Day holiday – and otherwise do oppose the motion. *See* attached Exhibit 1.

Second, there is no good cause for plaintiff to file two more responsive briefs and, indeed, doing so would be needlessly repetitive.

The five amicus briefs filed in support of defendants address four distinct issues: (1) the deposit copy issue, (2) the selection-and-arrangement issue, (3) the inverse ratio rule, and (4) the panel decision's ruling on the district court's exclusion

of a studio recording of a version of the allegedly infringed musical composition. On August 16, 2019, plaintiff filed a thirty-one-page brief in response to the first two amici briefs – by the IP Law Professors and the Musicologists – that discussed the selection-and-arrangement issue,¹ the inverse ration rule,² and the district court’s evidentiary ruling.³ Plaintiff’s Response (Dkt. Entry 133). In his lengthy response, plaintiff also discussed the deposit copy issue. *Id.* at 7-9.

Plaintiff advises the Court that the brief he seeks to file in response to the two amicus briefs of the 123 Songwriters and the RIAA and NMPA “will be the same in substance to the prior oppositions [he] filed when these amici first moved to submit briefs.” Plaintiff’s Motion at 2. However, his 2018 oppositions to their filing of amicus briefs in support of defendants’ Petition for Rehearing and Rehearing En Banc were procedural (Dkt. Entries 79 & 80) and repeating those procedural arguments in a response to their filed amici briefs would make no sense. As a result, plaintiff may have meant to refer to his substantive opposition last month (Dkt. Entries 110 & 111) to the motions of the IP Law Professors and Musicologists. He already re-wrote those opposition papers as the combined thirty-one-page response

¹ The Nineteen IP Law Professors Amici Brief (Dkt. Entry 106-1) at 11-25; the 123 Songwriters’ Amici Brief (Dkt. Entry 118-2) at 5-11, 17-21.

² The Nineteen IP Law Professors Amici Brief at 2-11.

³ The Nineteen IP Law Professors Amici Brief at 11-25; the 123 Songwriters’ Amici Brief at 12-17.

he filed on August 16, 2019 (Dkt. Entry 133). There is no need for him to file another, separate response “the same in substance to” the one he just filed. Instead, at most he should be provided leave to file a single combined brief adding any additional points beyond those he already addressed last week.

It is respectfully submitted that if plaintiff is permitted to file another responsive brief, it should be a single combined brief in response to the amici briefs of the United States, the 123 Songwriters and the RIAA and NMPA, and that it be filed by August 29, 2019.

Respectfully submitted,

Dated: August 19, 2019

/s/ Peter J. Anderson
Peter J. Anderson, Esq.
DAVIS WRIGHT TREMAINE LLP

Helene M. Freeman, Esq.
PHILLIPS NIZER LLP

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed this Petition with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF System on August 19, 2019.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system

Dated: August 19, 2019

/s/ Peter J. Anderson